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OFFICE OF PETITIONS

In re Application of :
Bruces S. McLean et al :
Application No. 10/044,346 :
Filed: January 11, 2002 :
Attorney Docket No. 7678.585 :

ON PETITION

This is a decision on the petition filed February 4, 2005, which is being treated as a petition under 37 CFR 1.313(c)(2), requesting withdrawal of the above-identified application from issue.

The petition is dismissed as moot for the reasons stated below.

A review of the file record discloses that a Notice of Allowance was mailed on November 5, 2004, with the issue fee being due on or before February 5, 2005. The petition states that the issue fee in this case has not been paid.

37 CFR 1.313(c)(2) provides for withdrawal of an application from issue after payment of the issue fee. In the instant case, as noted above, the issue fee in reply to the Notice of Allowance of November 5, 2004 has not been received. Therefore, the filing of a petition to withdraw this application from issue is unnecessary at this time. The mere filing of an RCE and submission will effectively withdraw an application from issue prior to payment of the issue fee. In view thereof, the petition to withdraw from issue is dismissed as involving a moot issue.

It is noted that the instant petition states that the issue fee is due January 5, 2005, when in fact the issue fee is due February 7, 2005.

The \$130 fee submitted for the petition under 37 CFR 1.313(c)(2) will be refunded to petitioner's deposit account.

Inquiries concerning this decision may be directed to the undersigned at
(571) 272-3208.

This matter is being referred to Technology Center Art Unit 2873.

Karen Creasy

Karen Creasy
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for Patent Examination Policy